

REMARKS

Applicants submit these Remarks in reply to the non-final Office Action mailed June 17, 2009. Claims 41, 46-56, 59-66, 79, and 81-85 are pending in this application, of which claims 41, 55, 79, and 81 are independent.

In the Office Action, the Examiner took the following actions:

- i. rejected claims 41, 43, 45, 47-51, 54-57, 60-64, 79, and 81-82 under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 6,061,018 ("Sheynblat"); and
- ii. rejected claims 44, 46 and 52-53 under 35 U.S.C. § 103(a) as being unpatentable over *Sheynblat* in view of U.S. Patent Publication No. 2003/0125046 ("Riley").

In this Reply, Applicants have amended independent claims 41, 55, 79, and 81 and dependent claims 46 and 59 in an effort to advance prosecution. Applicants' specification provides support for these amendments, for example, at least in original dependent claims 44, 45, and 58. Applicants have also canceled dependent claims 43-45 and 57-58 without prejudice or disclaimer. Finally, Applicants have added new dependent claims 83-85 having the same or similar subject matter as, for example, previously pending independent claim 41.

Applicants respectfully traverse all pending rejections for at least the reasons discussed below.

I. Rejections Under 35 U.S.C. § 102(b)

Applicants respectfully traverse the Section 102(b) rejections of claims 41, 43, 45, 47-51, 54-57, 60-64, 79, and 81-82. In order to properly establish an anticipation

rejection under 35 U.S.C. § 102, every element of the claims at issue must be found in the applied prior-art reference, either expressly or under principles of inherency. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). In this case, *Sheynblat* fails to teach or suggest every element of Applicants’ claims.

Applicants’ representative independent claim 41 calls for a combination including, for example:

identifying, in said cellular communications system, a plurality of base stations adjacent to said mobile terminal, each said adjacent base station having a respective altitude coordinate;

deriving an estimate of said altitude coordinate for said mobile terminal, wherein deriving the estimate of said altitude coordinate comprises one of i) determining a minimum of said altitude coordinates for said adjacent base stations and using said minimum value as said estimate of said altitude coordinate; and ii) determining an average value for said respective altitude coordinates of the plurality of adjacent base stations and using said average value as said estimate of the altitude coordinate;

Applicants respectfully submit that *Sheynblat* fails to disclose or suggest at least “deriving an estimate of [an] altitude coordinate” by either “i) determining a minimum of [the] altitude coordinates for [a plurality of] adjacent base stations and using [the] minimum value as [the] estimate of said altitude coordinate” or “ii) determining an average value for [the] respective altitude coordinates of the plurality of adjacent base

stations and using [the] average value as [the] estimate of the altitude coordinate," as recited in amended independent claim 41.¹

Sheynblat discloses "various methods and apparatuses for determining a position of a mobile satellite position system (SPS) with the use of altitude information." Abstract. According to *Sheynblat*, this altitude "is determined from a cell object information which is associated with the cell site transmitter which is in communication with the communication system of the mobile SPS receiver." Col. 2, ll. 27-30. For example, "in the case where a cell site identifier is provided such as a cell site number or other identification, then this cell object information will be used to obtain an estimated altitude. . . ." Col. 9, ll. 42-48; *see also* Figure 4 (illustrating a "Cell Based Information Source" containing an estimated altitude value 214 for each cell site 210.) In this manner, "the position of the mobile SPS receiver is calculated using the altitude which is determined from the cell object information." While *Sheynblat* generally discloses calculating a receiver's position using an altitude determined from cell object information, it does not disclose or suggest using the minimum or the average altitude value of multiple base stations adjacent to the mobile terminal.

First, *Sheynblat* does not disclose or suggest at least "determining a minimum of said altitude coordinates for said adjacent base stations and using said minimum value as said estimate of said altitude coordinate."² As noted above, *Sheynblat* generally

¹ These features were formerly recited in substantially similar form by dependent claims 44, 45, and 58, which are now canceled.

² Applicants note that the Office Action appears not to address this recitation, which was substantially recited by former dependent claim 44. While the Office Action identifies claim 44 under the rejections for both § 102(b) (p. 3) and § 103(a) (p. 6), it does not provide any analysis or mapping specific to the recitations of that claim.

discloses using an altitude determined from cell object information to calculate a receiver position. To obtain this altitude information, *Sheynblat* describes “using the cell object information as an index into [a] database” to obtain an estimated altitude value associated with the cell object. See col. 9, ll. 35-47; Figure 4 (showing, for example, estimated altitude Alt B2 associated with cell site B2). *Sheynblat* appears to be completely silent, however, as to identifying which of multiple altitude coordinates has a minimum value and using that minimum as the estimated altitude. For at least this reason, Applicants submit that *Sheynblat* fails to disclose or suggest at least “determining a minimum of said altitude coordinates for said adjacent base stations and using said minimum value as said estimate of said altitude coordinate,” as claimed.

Second, *Sheynblat* also does not disclose or suggest at least “determining an average value for said respective altitude coordinates of the plurality of adjacent base stations and using said average value as said estimate of the altitude coordinate.” As alleged disclosure of this subject matter, the Office Action cites a portion of *Sheynblat* that discusses a database (Office Action at 3 (citing *Sheynblat* at col. 9, ll. 1-5)), such as that illustrated in Figure 4, which stores cell object information such as a cell site identification and a corresponding estimated altitude for each cell site. Col. 8, l. 54 - col. 9, l. 8. The Office Action appears to rely on this passage because it mentions that “each estimated altitude may be an average altitude of the geographical region covered by the radio signal coverage from a cell site.” Col. 9, ll. 1-5 (emphasis added). However, as *Sheynblat* explains this “average altitude” refers to the average altitude over the geographical region covered by a particular cell site. Accordingly, this disclosure does not at all relate to the average of the altitudes of multiple adjacent base

stations covering multiple cell sites. For at least this reason, Applicants submit that *Sheynblat* fails to disclose or suggest at least “determining an average value for said respective altitude coordinates of the plurality of adjacent base stations and using said average value as said estimate of the altitude coordinate,” as claimed.

Applicants’ amended independent claims 55, 79, and 81, although different in scope from independent claim 41, recite similar subject matter and are therefore allowable for at least the same reasons. Dependent claims 46-54, 56, 59-66, and 82-85 depend from independent claims 41, 55, and 79 and are also allowable for at least the same reasons.

II. Rejections Under 35 U.S.C. § 103(a)

The examiner rejected claims 44, 46, and 52-53 under 35 U.S.C. § 103(a) as being unpatentable over *Sheynblat* in view of *Riley*. Notwithstanding any teachings of *Riley* relative to the subject matter recited in dependent claims 46 and 52-53, these pending dependent claims depend on independent claim 41 and are therefore allowable for at least the same reasons discussed above with reference to the pending 35 U.S.C. § 102(b) rejections.

Conclusion

The preceding remarks are based only on the arguments in the non-final Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability are advanced without prejudice to other possible bases of patentability.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and timely allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06 0916.

Respectfully submitted,

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